

United States
Circuit Court of Appeals
FOR THE NINTH CIRCUIT

SAMUEL L. BOYD, as Trustee in Bankruptcy of
THE LANE LUMBER COMPANY, LIMITED,
a Corporation, Bankrupt,

Appellant,

v.

M. K. WALL,

Appellee.

In the Matter of THE LANE LUMBER COMPANY, LIMITED, a Corporation, Involuntary Bankrupt.

Upon appeal from the United States District Court
for the District of Idaho, Northern Division.

Reply Brief of Appellant, Samuel L. Boyd, Trustee.

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JOHN H. WOURMS,
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It was not the intention of the appellant to ask leave of this Court to file a reply brief but owing to one phase of the litigation developed by the appellee, we beg leave to submit the following, bearing upon the "incumbrancer in good faith and for value" portion of Section 3443 of the statute under consideration.

In the Idaho Revised Statutes of 1887 the vendor lien sections herein referred to are §3440 and 3442.

In the Idaho Revised Codes of 1898 we find the identical sections being §3441 and 3443.

The Bankruptcy Act was enacted in 1898 after the enactment of the said vendor lien sections, which proves that the Legislature of Idaho could not have contemplated the passage or operation thereon of any Federal Bankruptcy statute.

The Supreme Court of Idaho has never passed on its vendor lien sections nor can we have any good reason for believing that, when called upon to do so in a case where the facts are similar to those herein, the Supreme Court will sustain a vendor's unasserted equity against the asserted rights of the trustee under the Bankruptcy Act.

There can be no dispute that, as a representative of the creditors, the trustee on his appointment and qualification became vested with title to the bankrupt's property in good faith, as said in section 47a, "with all the rights, remedied, and powers of a *creditor, holding a lien by a legal or equitable proceedings thereon.*"

The 2nd section of the statute relied upon by appellee provides that the vendor liens are valid against everyone claiming under the debtor, "except a purchaser or incumbrancer in good faith and for value."

The lien acquired under the Bankruptcy Act by the Trustee, for the creditors, makes him an "incumbrancer in good faith," and the credit extended by the various creditors of the bankrupt is the "value."

"An incumbrance is defined as a burden, an obstruction, impediment."

Anderson's Dictionary of Law, p. 533.

"An attachment levied upon the land is an incumbrance."

Kelsey v. Remer, 43 Conn. 129, 29 Am. Rep. 638-639-640 (Conn).

"The lien of an attaching creditor is an incumbrance, equally with a mortgage."

Spangler v. West 43 P. 905-907. (Colo.).

"A judgment is an incumbrance, and the holder thereof is an incumbrancer."

Devoe v. Runkle 74 P. 836-837-838. (Wash.)

An attachment is an incumbrance "and shall take precedence of an unrecorded title or interest of which the attaching creditor had no notice before attachment."

Teller v. Hill 72 P. 811-813. (Colo.).

In view of the foregoing principals, and the decisions in support of our contention that the trustee has a right to contest the vendor's lien as a purchaser or incumbrancer in good faith and for value, it follows that the rules of equity, applying to liens, cited in our opening brief, make it quite evident that the title to the land acquired by the trustee causes a postponement of the vendor's lien right which thereby loses its precedence and is postponed to the sub-

sequent equity and title of the trustee on account of the negligence and laches of the claimant and the operation of the Bankruptcy Act as amended.

Under Section 3149, Idaho Revised Codes, the lien claimant might have protected his vendor lien by filing notice thereof with the County Recorder of the county in which the land is situated, as materialmen, laborers and other lien claimants are required to do. The last mentioned class of lien claimants must file their claims for record within 60 days after furnishing the material or performing the labor or they lose their statutory lien. This court should not say that a vendor's lien claimant, a freeholder, a man necessarily more experienced in the business world than a laborer, shall be given a preference and an advantage over the sinew of our nation.

Respectfully submitted.

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A copy of the foregoing brief received this.....
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